

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Request for Waiver by)
NTUA Wireless, LLC)
Rural Health Care Universal Service) CC Docket No. 02-60
Support Mechanism)

ORDER

Adopted: March 20, 2023

Released: March 20, 2023

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address a request filed by the Navajo Tribal Utility Authority Wireless, LLC (NTUAW) seeking waiver of section 54.627(a) of the Commission’s rules, the invoice filing deadline rule under the Rural Health Care Program’s Healthcare Connect Fund (HCF) Program. For the reasons provided below, we grant the requested relief.

II. BACKGROUND

2. The HCF Program provides eligible health care providers with a flat 65% discount on an array of advanced telecommunications and information services. The HCF Program funding disbursement process requires that an invoice be submitted to the Universal Service Administrative Company (USAC) using an FCC Form 463. The health care provider initiates the invoicing process by preparing the FCC Form 463 and sending it via USAC’s invoicing system to the service provider for completion. Section 54.627(a) of the HCF Program rules requires that the completed FCC Form 463 be submitted to USAC within 120 days of the service delivery deadline, unless a later date applies due to a revised funding commitment or successful appeal of a denied funding request. In response to the

1 Petition for Waiver by NTUA Wireless, LLC of the Rural Health Care Program’s Telecom Program Invoicing Deadline, CC Docket No. 02-60 (filed Oct. 25, 2022) (NTUAW Request for Waiver). NTUAW specifically requests a one-time extension of the invoice filing deadline, which in effect would require a waiver of the invoice filing deadline rule. The invoice filing deadline is set forth in section 54.627(a) of the Commission’s rules. 47 CFR § 54.627(a).

2 See 47 CFR §§ 54.607-54.618.

3 See USAC, Rural Health Care, Healthcare Connect Fund Program, Step 6: Invoice USAC, https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-6-invoice-usac/ (last visited Mar. 20, 2023). Both the health care provider and service provider are required to make certifications as to, among other things, the accuracy of the information contained in the FCC Form 463 before USAC may process and pay the invoice. See 47 CFR § 54.627(d)(1).

4 47 CFR § 54.627(a). The service delivery deadline, with limited exceptions, is June 30 of the funding year for which program support was sought. 47 CFR § 54.626(a). Rural Health Care Program participants may request a

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administrative burdens suffered by health care providers as a result of the COVID-19 pandemic, the Wireline Competition Bureau (Bureau) extended the invoice filing deadline by an additional 120 days from October 28, 2021 to February 25, 2022 for funding year 2020 requests.⁵

3. NTUAW provides telecommunications services to health care providers and other entities within the Navajo Nation.⁶ For funding year 2020, the 17 eligible health care providers on the Navajo Nation received funding commitment decision letters from USAC in May 2021, and NTUAW provided telecommunications circuits to these rural health care providers.⁷ NTUAW states in its waiver request that its regulatory compliance manager who was responsible for submitting NTUAW's invoices to USAC became ill with COVID-19 in January 2022, which was shortly before the February 25, 2022 invoicing deadline.⁸ In its waiver request, NTUAW states that the regulatory compliance manager "suffered with effects from COVID-19 for three months, yet still tried to work as much as her illness would allow."⁹ She attempted to submit the invoices in March 2022, shortly after the end of February deadline, but was unable to do so because the deadline lapsed.¹⁰ NTUAW requests that the February 25, 2022 Rural Health Care Telecom Program FY 2020 invoice filing deadline be waived.¹¹

III. DISCUSSION

4. We grant the waiver request of NTUAW. The Commission's rules may be waived for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹⁵

5. Special circumstances in this particular case favor waiving the requirements of section 54.627(a). The record indicates that the NTUAW regulatory compliance manager had a serious illness that temporarily impaired her ability to fully meet the new Commission invoice submission deadlines, and that she still attempted to submit the required invoices not long after the deadline in March 2022.¹⁶ As this occurrence was an exceptional circumstance, and because the regulatory compliance manager only missed the deadline by a short period of time even in these unique circumstances, we find that a one-time

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one-time 120-day extension of the invoice filing deadline, which USAC is obligated to grant if timely requested. *Id.* § 54.626(b).

⁵ *Rural Health Care Support Mechanism, Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7062, para. 30 (WCB 2021).

⁶ NTUAW Request for Waiver at 1.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ NTUAW Request for Waiver at 3, 14 (Exhibit 2).

waiver of the invoice submission deadline here would be in the public interest.¹⁷ Furthermore, denying funding in this case would severely penalize a participant in an unwarranted manner for an isolated circumstance that is unlikely to repeat itself. NTUAW attempted to comply with the invoice deadline in these circumstances and attempted to file its invoice forms shortly after the deadline. We therefore find that granting a waiver in this case would further the mission of the RHC Program.¹⁸

6. In addition, the record presents no evidence of waste, fraud, or abuse on the part of NTUAW.¹⁹ Accordingly, we conclude that the unique special circumstances of the NTUAW compliance manager's hardship combined with the public interest in allowing it to receive RHC Program funding to provide health care to the Navajo Nation it serves justifies waiving the section 54.627(a) invoice filing deadline in this particular case. We therefore will allow NTUAW to re-submit the invoice within 60 days of this decision, and direct USAC to process the Rural Health Care Telecom reimbursement once NTUAW resubmits its invoices for reimbursement.

7. We emphasize that our holding here is narrow in scope and premised on the special circumstances and unique public interest considerations cited. Participants in the Rural Health Care Program continue to have a joint obligation to submit invoices and the accompanying required forms by the filing deadline set forth in our rules.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.719(c), the waiver request of Navajo Tribal Utility Authority Wireless, LLC IS GRANTED to the extent described herein.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.719(c), that section 54.627(a) of the Commission's rules, 47 CFR § 54.627(a), IS WAIVED to the limited extent provided herein and NTUAW shall re-submit the invoice at issue within 60 days of this decision.

10. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.719(c), that USAC SHALL PROCESS the FCC Form 463 associated with funding request numbers 2075556, 2075562, 2075557, 2075555, 2075554, 2075563, 2075564, 2075553, 2074684, 2075552, 2075567, 2075558, 2075561, 2075560, 2075568, 2075566, and 2075559 within 60 days of receipt of the completed form.

¹⁷ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District Abbotsford, Wisconsin, et al.*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (granting waiver when applications were filed within a "reasonable period" of the deadline "despite the person responsible for submitting the form suffering a serious illness").

¹⁸ *Id.*

¹⁹ *See Request for Review or Waiver by Maniilaq Association of Decision of Universal Service Administrator, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 1458, 1462, para. 9 (WCB 2020) (granting waiver of competitive bidding rules requirements in part because of no evidence of waste, fraud, or abuse on the part of the health care provider applicant).

11. IT IS FURTHER ORDERED that, pursuant to the authority delegated in section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jodie C. Griffin
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau